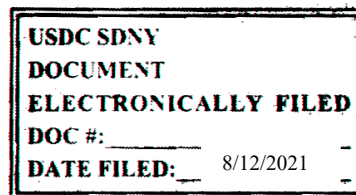


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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GARY KEMP,

Petitioner,

20-CV-9121 (RA)(SN)

-against-

ORDER

JOSEPH NOETH,

Respondent.

-----X

SARAH NETBURN, United States Magistrate Judge:

Petitioner filed a letter with the Court on August 10, 2021, seeking to stay his habeas petition so that he may exhaust certain claims in state court. ECF No. 26. Respondent has already asserted that, read liberally, three of Petitioner's four claims are unexhausted: (1) his ineffective of counsel claim: (2) "newly discovered evidence" claim: and (3) against the weight of the evidence claim (which could be construed as a legal sufficiency claim). See generally ECF No. 18 (Respondent's Memorandum of Law).


A court can, in its discretion, stay a petition pending the total exhaustion of all claims. Rhines v. Weber, 544 U.S. 269, 277–78 (2005); Zarvela v. Artuz, 254 F.3d 374, 378–79 (2d Cir. 2001). The Court has discretion to grant a stay if: (1) good cause exists for the petitioner's failure to exhaust his claims in state court; (2) the unexhausted claims are potentially meritorious; and (3) the petitioner did not engage in intentionally dilatory litigation tactics. Pierre v. Ercole, 607 F. Supp. 2d 605, 608 (S.D.N.Y. 2009) (citing Rhines, 544 U.S. at 277–78).

At this stage, the Court cannot determine whether the claims Petitioner wishes to exhaust in state court are plainly meritless. The Court has also seen no evidence that Petitioner has engaged in intentionally dilatory litigation tactics.

Accordingly, the Court GRANTS Petitioner's motion and STAYS the litigation deadlines in this case. Petitioner is directed to exhaust his state court remedies within 30 days of this Order, and to file proof that he has done so with the Court. Petitioner must advise this Court in writing within 30 days after his state court exhaustion is complete. At that time, the Court will set a schedule for the Petitioner to file an amended petition and the Respondent to file any supplemental brief in opposition.

The Clerk of Court is respectfully directed to mail a copy of this order to the *pro se* Petitioner.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: August 12, 2021
New York, New York